IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2512 OF 2001

Shri. Vilas Shravan Kamble,
Worli Milk Dairy Quarters,
Chawl No. 1, Room No. 5,
Abdul Gafar Khan Road,
Worli, Mumbai 400 018. ... Petitioner

Vs.

Brihan Mumbai Municipal Corporation,
BEST Bhavan, Colaba,
Mumbai 400 005. .... Respondent

Mr. N.M. Ganguli for the Petitioner.

Mr. S.K. Talsania with Ms. Rita Vora i/by Crawford Bayley & Co. for the Respondent.

CORAM : F.I. REBELLO,J.
DATED : AUGUST 19, 2004

ORAL JUDGMENT:

1. The Petitioner was employed with Respondent as driver. During the course of his employment while driving the vehicle, he met with an accident resulting in loss of life. An enquiry was conducted based on the findings recorded by the Enquiry Officer.The respondent Corporation dismissed the petitioner from service with effect from 19.11.1997. The Petitioner had joined services of Respondent Corporation on 18.9.1991. He was chargesheeted under the Standing Orders 20(J) for gross negligence. Against the order of

dismissal he filed complaint under Unfair Labour Practice Act before the Labour Court invoking items 1(a), (b), (d), (e), (f) and (g) of Schedule IV of the MRTU & PULP Act, 1971. The respondent contested the claim of unfair Labour Practice as alleged by the Petitioners. The Respondent's case was that the enquiry had been conducted in accordance with principles of natural justice. The charges were duly proved against the petitioner. The incident had taken place on 27.6.1997. The bus driven by the petitioner gave a dash to the pedestrian who was crossing the road. The pedestrian was admitted to Cooper Hospital but he succumbed to injuries. It was submitted that the punishment imposed was not disproportionate and accordingly no case of unfair labour practice have been made out and the complaint should be dismissed. By order of 23.7.1999 the Labour court directed reinstatement of the Petitioner but without back wages but with continuity of service. The learned Labour Court held that the validity of the departmental enquiry had not been challenged. The Labour Court further held that on going through the evidence of the Enquiry Officer, it cannot be said that the enquiry officer did not consider the facts and circumstances on record. The learned

Labour Court held that considering the evidence recorded it cannot be said that the respondents are engaged in unfair labour practice under Item No. 1 of Schedule IV of M.R.T.U. & P.U.L.P. Act. The court noted that the incident took place about 100 mtrs from the bus stop and the submission on behalf of the petitioners that in these circumstances the speed of the bus could not have been excessive. That it was raining and the road was wet.There are break marks of about 15 to 20 ft. and 3 to 4 ft. skid mark. There was no zebra crossing on the road to take extra precaution while driving. The pedestrian whilst crossing the road, as per evidence of some of the witness was in two minds and suddenly taken turn when the bus gave slight dash to right side of the pedestrian. The learned labour court held that the element of negligence and other circumstances i.e. conditions of road traffic, rainy season, speed of the bus and sudden turn of the pedestrian has to be taken into consideration. The learned Labour further held that this was first chargesheet against the petitioner and therefore, on account of applying the ratio of the judgment of the learned Single Judge of this court in Ramdas Kisan Navi Vs. Divisional Controller, M.S.R.T.C. 1992 IT CLR Page

238 that the punishment of dismissal from service on account of single accident cannot be given and that the workman can be visited with any other punishment commensurate with the misconduct in which he indulged. Therefore directed reinstatement without back wages.

2. Aggrieved both the petitioners and respondents preferred revision application before the Industrial Court. The revision preferred by the respondent was allowed and revision preferred by the petitioner was dismissed. The learned Revisional Court held that under Section 44 of the M.R.T.U. & P.U.L.P. Act, the Industrial Court was conferred with power to set aside the order when the evidence on record if reasonably read is incapable of supporting the order. The learned Industrial Court proceeded on the footing that the Labour Court has held the respondent had not committed any unfair Labour Practice and that after holding the enquiry was fair and proper and the findings were not perverse ought not to have interfered with the punishment awarded by the Enquiry officer and confirmed by the Appellate authority. As even unfair labour practice is not proved, the learned Judge was pleased to reverse

the finding of the learned Labour Court and set aside the order of reinstatement. It is this order which is the subject matter of the present petition.

3. At the hearing of this petition, on behalf of the petitioner, their learned counsel points out that the learned Industrial Court considering the findings recorded by the Labour Court that the punishment was disproportionate, ought not to have interfered with the order of the Labour Court. The finding that the punishment was disproportionate by itself is an act amounting to an unfair labour practice. The Petitioners past record was good. The Petitioner had examined himself. No evidence of an eye witness to contrary to the case of the Petitioner had been recorded in so far as respondents were concerned. The person was hit the left corner of the bus. The break marks and the skid marks and the fact that it was rainy season, would show that this was not the case of gross negligence but an incident which took place on account of the circumstances then prevailing. The deceased who was injured and subsequently died was aged about 60 to 65 years and who suddenly came on the road.

. On the other hand, on behalf of the respondents, their learned counsel contends that the concerned person had died and even otherwise it cannot be said the respondents were guilty of unfair labour practice and consequently the petition ought to be dismissed.

4. It is true that in so far as interference with the order of punishment there is no specific power conferred on the Labour Court as conferred on the Industrial Court under Section 11A of the Industrial Disputes Act, 1947. However, Schedule IV (1) sets out what would constitute an unfair labour practice in case of discharge or dismissal of employee. Schedule IV, 1(a) refers to victimization and (b) refers to not in good faith but in the colourable exercise of employers rights. While 1(g) refers to misconduct of minor or technical character when shockingly disproportionate punishment is imposed. Item 1(g) of the IVth schedule was considered by a learned Single Judge in Writ Petition No. 3863 of 1999. The learned Judge held that the said item need not necessarily apply to only punishment of minor or technical nature only. See Colour Chem Ltd. &:

Ors. Vs. A.L. Alaspurkar 1993 III LLJ 838. However, that does not mean that Items 1(a) and (b) are excluded in such cases if it is found that considering the misconduct proved, the punishment imposed is disproportionate and it may amount to victimization or colourable exercise of employer's right. In Scooter India Limited, Lucknow Vs. Labour Court, Lucknow and others, AIR 1989 Supreme Court 149 the learned Apex Court held that even in the event that the enquiry was held to be fair and proper and findings were not vitiated, still it will be open to the court to interfere with the order of punishment. The matter there was arising from the provisions of U.P. Industrial Disputes Act, 1947. Another learned Single Judge in Ramdas Navi (supra) took a view that if a case of single incident cannot result in imposing the punishment of dismissal and the workman can be visited by any other appropriate punishment commensurate with the misconduct proved. Respondents had relied on there unreported judgement of the Division Bench in the case of Municipal Corporation of Greater Bombay Vs. M.S. Apte, President Industrial Court and others in Appeal No. 1179 of 1984 decided on 13th November, 1987. That Judgment in our opinion does not lay down any ratio. On the facts of that case

and considering the nature of the accident, the learned appellate bench of this court interfered with the order of the courts below which had directed reinstatement with backwages.

5. In our opinion, considering the facts on record, the negligence was not as such as to visit the workman with the punishment of dismissal. There was nothing in the past record which was adverse to the petitioner. The Petitioner had put in seven years of service. No doubt the employer had power to impose punishment but that discretion must be exercised fairly and in a just manner. It must not be shockingly disproportionate otherwise the punishment imposed may sound by way of victimization or colourable exercise of the powers. In the instant case, we are of the opinion that the punishment imposed was disproportionate on considering the accident and the circumstances in which the accident took place. The Industrial Court, therefore acted in excess of jurisdiction in interfering with the order of the Labour Court. In the light of that, the following order :

. The Respondents are directed to reinstate the

petitioner with continuity of service but without backwages within the period of six weeks from today, subject to the usual medical test and training. Rule made absolute accordingly.

Petition stands disposed of accordingly.

(F.I. REBELLO,J.)